

**PORT OF BROOKINGS HARBOR  
CURRY COUNTY, OREGON**

**RESOLUTION NO. 2024-01**

**A RESOLUTION OF THE BOARD OF COMMISSIONERS AUTHORIZING  
INTERGOVERNMENTAL AGREEMENT WITH CURRY COUNTY**

**WHEREAS**, the Port of Brookings Harbor is a port district, organized and operated under the provisions of ORS Chapter 777, and has the authority to adopt resolutions; and

**WHEREAS**, under the authority on ORS 190.110, this intergovernmental Agreement (“IGA” or “Agreement”) is made by and between Curry County a political subdivision of the State of Oregon (“County”) and the Port of Brookings Harbor (“Port”)

**WHEREAS**, the County implemented storm drain facilities in conjunction with the Oregon Department of Transportation that direct stormwater as well as the waters of Tuttle Creek (the “Tuttle Creek Storm Drain Facilities”) in a Northwesterly direction, through a water catch basin (the “Catch Basin”) adjacent to the Southeastern corner of the Port property line, that empties into the Port’s Boat Basin No. 2 (the “Boat Basin”); and

**WHEREAS**, the County is responsible for the maintenance and repair of its storm drain infrastructure. Stormwater, sediment, and other material is filtered through the Catch Basin prior to flowing into the Boat Basin. Due to the volume of stormwater passing through the Tuttle Creek Storm Drain Facilities, sediment and other material accumulated within the Catch Basin at times exceeds its holding capacity if the Catch Basin is not maintained regularly; and

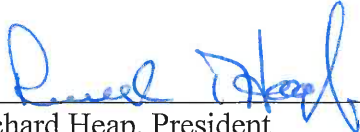
**WHEREAS**, should maintenance of the Catch Basin not occur regularly, sediment and other material overrun the Catch Basin and deposit directly into the Boat Basin, over time rendering the Boat Basin incapable of accommodating its intended use due to insufficient water depth; and

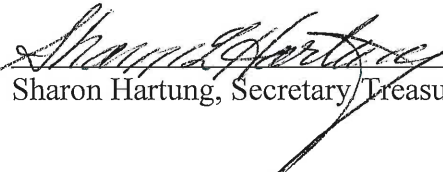
**WHEREAS**, both parties desire to formalize their agreement and to create a Standard Operating Procedure for the maintenance and inspection of the Tuttle Creek Storm Drain Facilities.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE PORT OF BROOKINGS HARBOR THAT:**

1. The Port of Brookings Harbor Board of Commissioners (“Commissioners”) approve entering into the attached, Exhibit A, Intergovernmental Agreement with Curry County.

**APPROVED AND ADOPTED** by the Board of Commissioners this 17th day of January 2024.

  
Richard Heap, President

**ATTEST:**  
  
Sharon Hartung, Secretary/Treasurer

**INTERGOVERNMENTAL AGREEMENT (“IGA”)  
BY AND BETWEEN CURRY COUNTY AND PORT OF BROOKINGS-HARBOR**

This Intergovernmental Agreement (“Agreement”) is entered into on the 20<sup>th</sup> day of December, 2023 (“Effective Date”) by and between Curry County, a political subdivision of the State of Oregon, hereinafter referred to as the “County,” and the Port of Brookings Harbor, an Oregon municipal corporation, hereinafter referred to as the “Port.”

**RECITALS**

**WHEREAS**, the County implemented storm drain facilities in conjunction with the Oregon Department of Transportation that direct stormwater as well as the waters of Tuttle Creek (the “Tuttle Creek Storm Drain Facilities”) in a Northwesterly direction, through a water catch basin (the “Catch Basin”) adjacent to the Southeastern corner of the Port property line, that empties into the Port’s Boat Basin No. 2 (the “Boat Basin”); and

**WHEREAS**, the Tuttle Creek Storm Drain Facilities are shown on the diagrams attached hereto as “Exhibit A,” and include all of the drainage infrastructure up to the point of discharge into the Boat Basin; and

**WHEREAS**, the County is responsible for the maintenance and repair of its storm drain infrastructure; and

**WHEREAS**, stormwater, sediment, and other material is filtered through the Catch Basin prior to flowing into the Boat Basin; and

**WHEREAS**, due to the volume of stormwater passing through the Tuttle Creek Storm Drain Facilities, sediment and other material accumulated within the Catch Basin at times exceeds its holding capacity if the Catch Basin is not maintained regularly; and

**WHEREAS**, should maintenance of the Catch Basin not occur regularly, sediment and other material overrun the Catch Basin and deposit directly into the Boat Basin, over time rendering the Boat Basin incapable of accommodating its intended use due to insufficient water depth; and

**WHEREAS**, the Port has set forth a potential cause of action due to the failure by the County to inspect and maintain the Tuttle Creek Storm Drain Facilities, as well as the resulting financial liability for the loss of use of the Boat Basin; and

**WHEREAS**, both parties desire to formalize their agreement and to create a Standard Operating Procedure for the maintenance and inspection of the Tuttle Creek Storm Drain Facilities.

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

**1. INCORPORATION AND PURPOSE.**

The above recitals are incorporated herein by reference. The purpose of this Agreement is to set forth in writing the responsibilities of the parties hereto, and to create a Standard Operating Procedure for the inspection, maintenance, and cleaning of the Tuttle Creek Storm Drain Facilities.

**2. RESPONSIBILITIES.**

**2.1 County Responsibilities.** The Count agrees to:

- (a) Perform regular, routine inspections of the Catch Basin to ensure that maintenance is performed.
- (b) Remove or otherwise abate sediment or material deposits from the Catch Basin at its sole cost and expense.
- (c) Remove the sediment and other material previously deposited in the Boat Basin by way of the Tuttle Creek Storm Drain Facilities on or before February 15, 2024.
- (d) Pay labor, fuel, and incidental costs associated with the removal or abatement of sediment or material from the Boat Basin.
- (e) Pay the cost of equipment as provided in *Section 2.2(d)*.

**2.2 Port Responsibilities.** The Port agrees to:

- (a) Regularly inspect the Boat Basin in order to ensure that sediment and material deposits do not accumulate. The Port may, but is not required to, inspect the Catch Basin in conjunction with its inspections of the Boat Basin.
- (b) Provide the County with notice regarding any immediate or emergent action necessary to remove or abate sediment and material deposits from the Catch Basin, if the Port becomes aware of such circumstance.
- (c) Remove or otherwise abate sediment or material deposits from the Boat Basin, at the County's cost and expense as provided in *Section 2.1(d) and 2.2(d)*.
- (d) Pay the cost of the purchase, lease, or rental of any equipment needed to remove sediment or material from the Boat Basin; provided, however, that if it is found that the sediment or material was deposited into the Boat Basin due to the County's failure to perform its obligations under this Agreement, the County will be

responsible for all costs relating to removing such sediment or material, including equipment costs.

### **3. STANDARD OPERATING PROCEDURE**

The Standard Operating Procedure (“SOP”) attached hereto as “Exhibit B” is hereby incorporated herein by reference. The parties agree to conduct their responsibilities under this Agreement in accordance with the SOP.

### **4. PAYMENT**

#### **4.1 Obligation for Payment.**

Obligation for payment shall arise when the Port is required to purchase, lease, rent, or otherwise obtain equipment due to the County’s failure to perform its obligations under this Agreement. The County agrees to be responsible for the cost of any such equipment obtained, including any associated fuel, labor, and incidental costs.

#### **4.2 Authority to Purchase.**

It is the intention of the parties that the purchase of any equipment shall be arranged upon the coordination and mutual agreement of the parties regarding the necessary specifications of that equipment.

#### **4.3 Requests for Payment.**

Requests for payment shall be issued by the Port to the County as soon as reasonably possible. Payment shall become due and owing not later than thirty (30) days from the date of receipt of an invoice.

#### **4.4 Dispute of Purchase.**

Should the County dispute the obligation to pay for any equipment on the grounds that it has satisfied all of its obligations under this Agreement, the County may issue a written dispute to the Port Manager.

Upon receipt of a dispute by the County, the Port Manager shall:

- (a) Acknowledge receipt of the dispute within fourteen (14) days.
- (b) Investigate the validity of the dispute.
- (c) Issue a written determination of the dispute to the Port within thirty (30) days of the date of acknowledgement of dispute.

A dispute issued by the County shall in no case absolve the County of its responsibility to pay any due and owing request for payment under *Section 4.3* above; provided, however, that upon resolution of a dispute in favor of the County,

partial or full reimbursement to the County shall be issued by the Port within thirty (30) days of that written determination.

## **5. WAIVER OF LIABILITY**

Subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act (ORS 30.260 to 30.300), and in consideration of each party performing their respective duties as set forth by this Agreement, the County and Port mutually indemnify and hold harmless each other as to any cause of action arising out of, or resulting from, the failure of the Tuttle Creek Storm Drain Facilities, including but not limited to the accumulation of material within the Boat Basin, flooding of storm drain facilities, and any financial liability attributed thereto, except to the extent caused by the indemnifying party's failure to perform its duties set forth by this Agreement.

## **6. TERM.**

This Agreement shall commence on the Effective Date and shall continue in full force and effect until the Agreement is terminated by either party in accordance with *Section 7* of this Agreement.

## **7. BREACH AND TERMINATION.**

Should a breach of the duties assigned to the County under this Agreement occur, the Port shall issue a written notice of breach to the County. The County shall have thirty (30) days, beginning at the date of receipt of notice, to cure the breach.

Upon ten (10) days' written notice, the Port may terminate this Agreement upon the failure of the County cure any breach within such 30-day period.

Otherwise, this Agreement may be terminated by the mutual written consent of both parties.

## **8. COMPLIANCE**

Each party agrees to comply with all applicable local, State and Federal laws, rules, and regulations pertaining to the activities performed under this Agreement. Additionally, both the County and Port shall comply with reasonable requests for information or coordination received in connection to this Agreement.

## **9. DISPUTE RESOLUTION**

The parties desire, if possible, to resolve disputes, controversies, and claims arising out of this Agreement (each a "Dispute") without litigation. To that end, at the written request of either party, each party shall appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any Dispute arising under this Agreement. The parties intend that these negotiations be conducted by non-lawyer, business representatives. The discussions shall be left to the discretion of the representatives.

9.1 If the negotiations do not resolve the Dispute within sixty (60) days of the initial written request, the Dispute shall be submitted to non-binding mediation with a mediator

chosen by mutual agreement of the parties or, in the absence of such agreement, with a mediator appointed by the presiding judge of the Circuit Court for Curry County.

9.2 Each party shall bear its own cost of these dispute resolution procedures. The parties shall equally share the fees of the mediation and the mediator.

9.3 In the event the Dispute cannot be resolved under the above process, the Dispute shall be subject to binding arbitration. Arbitration shall be conducted pursuant to the rules of the American Arbitration Association in accordance with its Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Notwithstanding the above, disputes regarding the County's obligation to pay for equipment costs shall be resolved pursuant to *Section 4.4*.

#### **10. WAIVER**

No failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such right to performance or right to exercise such right or remedy.

#### **11. GOVERNING LAW.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

#### **12. NO THIRD-PARTY BENEFICIARIES.**

This Agreement shall not confer any rights or remedies upon any person other than the parties and their respective successors and permitted assigns.

#### **13. ENTIRE AGREEMENT AND MODIFICATION.**

This Agreement sets forth the entire understanding of the parties concerning the subject matter hereof and incorporates all prior negotiations and understandings. There are no covenants, promises, agreements, conditions, or understandings, either oral or written, between the parties relating to the subject matter of this Agreement other than those set forth herein. No alteration, amendment, change or addition to this Agreement shall be binding upon any party unless in writing and signed by the parties.

**14. GENERAL PROVISIONS.** Unless otherwise specifically prescribed in this Agreement, the following provisions shall govern its interpretation and construction:

**14.1** When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number.

**14.2** Time is of the essence of this Agreement.

**14.3** Every duty and every act to be performed by either party imposes an obligation of good faith on the party to perform such.

**14.4** Any provision or condition of this Agreement may be waived at any time, in writing, by the party entitled to the benefit of such provision or condition. Waiver of any breach of any provision will not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

**14.5** Where the performance or doing of any act, duty, matter, payment, or thing is required hereunder and the period or duration for the performance is prescribed and fixed herein, the time shall be computed to exclude the first and include the last day of the prescribed or fixed period or duration of time. When the last day of the period falls on Saturday, Sunday, or a legal holiday, that day shall be omitted from the computation.

**14.6** The paragraph captions and headings in this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

**15. NOTICE.**

Any notice by either party to the other shall be in writing and effective at the earlier of actual receipt or rejection of such notice or three (3) days after deposit in the mails as registered or certified mail, postage prepaid, addressed to the County or the Port at the addresses set forth below, or at such other addresses as either party may designate by notice to the other party.

**County**  
94235 Moore Street, Suite 123  
Gold Beach, OR 97444  
Attn: County Legal Counsel

**Port**  
16330 Lower Harbor Road  
P.O. Box 848  
Brookings, OR 97415  
Attn: Port Manager

(Signatures follow)

**IN WITNESS WHEREOF**, the parties hereto have executed this Intergovernmental Agreement as of the Effective Date.

**CURRY COUNTY**

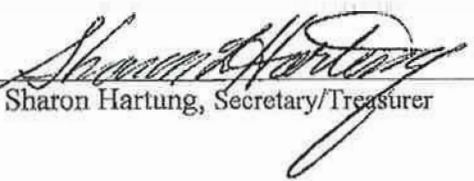
  
\_\_\_\_\_  
John Herzog, Chair

  
\_\_\_\_\_  
Brad Alcorn, Vice Chair

  
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Jay Trost, Commissioner

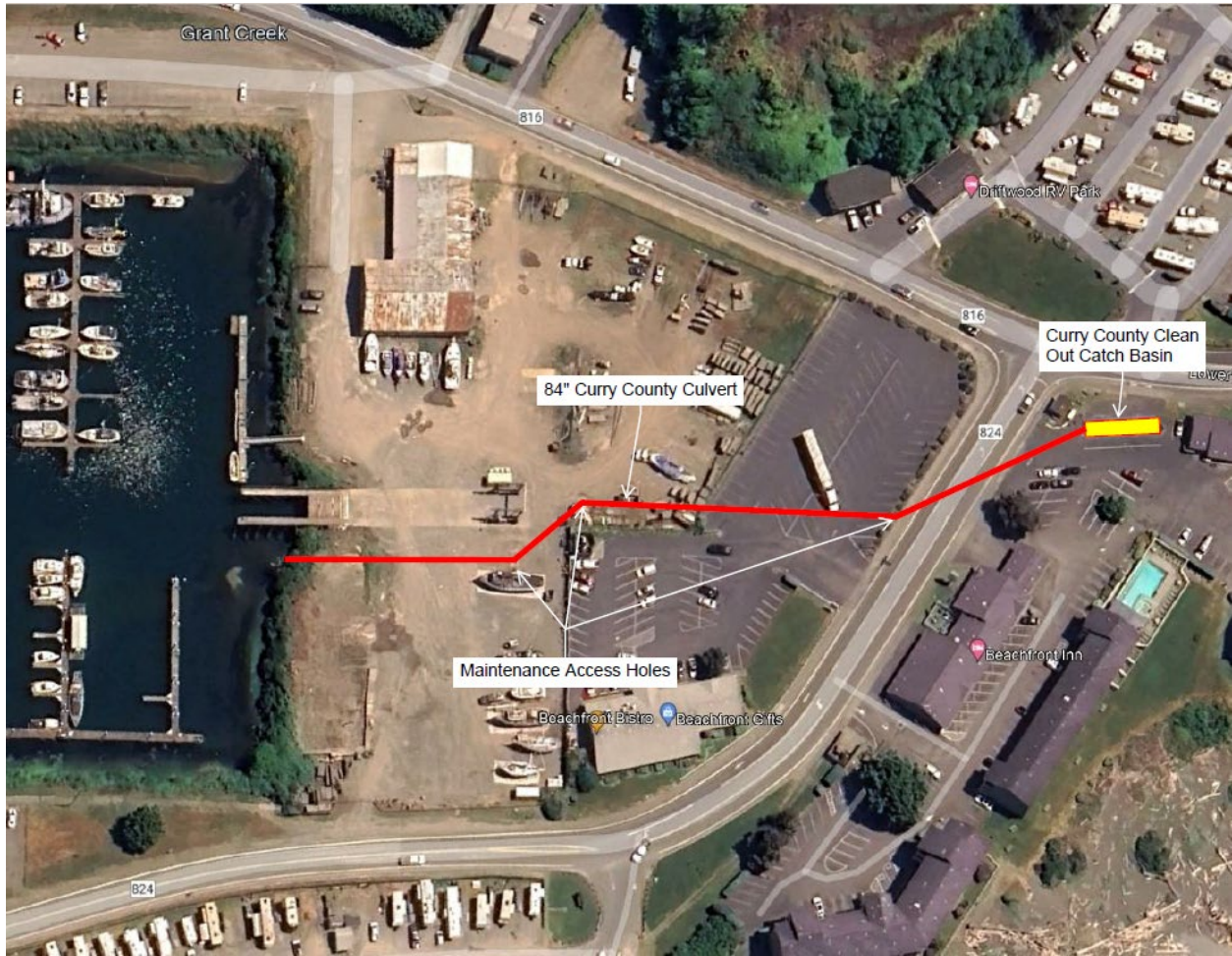
**PORT OF BROOKINGS-HARBOR**

  
\_\_\_\_\_  
Richard Heap, President

  
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Sharon Hartung, Secretary/Treasurer



# EXHIBIT A Tuttle Creek Storm Drain Facilities



**EXHIBIT B**  
**STANDARD OPERATING PROCEDURE**

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**INSPECTION**

**Types of Inspection**

The County shall perform routine inspections of the Catch Basin as set forth below.

Inspections of the Boat Basin shall be the responsibility of the Port and the frequency shall be at the discretion of the Port, provided, however, that regular inspections of the Boat Basin are expected in order to ensure that any potential maintenance or abatement issues are observed in a timely manner.

**Inspection Frequency**

The County shall visually inspect the catch basin as follows:

1. During the months of **November, December, January, February** and **March**, inspections shall occur once weekly.
2. During the months of **April, May, June** and **October**, inspections shall occur twice monthly.
3. During the months of **July, August**, and **September**, inspections shall occur once monthly.
4. Upon request by the Port, the County shall perform an inspection of the catch basin within twenty-four (24) hours.

**Inspection Records**

Records of inspections of the Catch Basin by the County or the Port shall be made on the Inspection Record form attached hereto. Inspection Records created by the County shall be provided to the Port on the first working day of each calendar month.

**NOTIFICATION**

**Notification by County**

If an inspection should reveal unsatisfactory conditions in the Catch Basin, the County shall arrange for abatement procedures within twenty-four (24) hours of the discovery of the unsatisfactory conditions. The County shall provide as much notice as is reasonably possible to the Port if abatement is expected to have any impact on Port operations.

**Notification by Port**

Should the Port discover unsatisfactory conditions within the Catch Basin or the Boat Basin, the Port will immediately notify the County. If regarding the Catch Basin, the County will then arrange for an inspection to be conducted. If regarding the Boat Basin, the County will coordinate with the Port pursuant to the “Abatement” section below.

**ABATEMENT**

**Equipment and Staff**

Whenever possible, the County shall use the County's equipment to abate the unsatisfactory conditions present within the Catch Basin. Should specialized equipment be needed to abate conditions within the Catch Basin or Boat Basin, County and Port will coordinate to procure such equipment in the best interests of the Port. Payment for specialized equipment will be arranged pursuant to Section 4 of the Intergovernmental Agreement between the parties.

**Responsibility and Coordination**

Work conducted to abate sediment or material deposit within the Boat Basin shall be the responsibility of the Port, and the County will be responsible for any cost incurred by the Port in completion of that abatement. Generally, the parties are expected to coordinate to the extent possible to ensure the economic feasibility of the abatement for both parties.

**Recommendations of Port**

Whenever possible, the County shall accept the reasonable recommendations of the Port regarding the specific type of equipment and methods used to abate unsatisfactory conditions within the Catch Basin or Boat Basin.

**Removal of Boat Basin Material**

Should the abatement of sediment or material deposits within the Boat Basin become necessary specifically due to the failure of County to regularly inspect and maintain the Catch Basin, the County shall be responsible for any costs, fees, and incidental charges incurred by the Port in the course of the removal of sediment or material from the Boat Basin as provided in the Intergovernmental Agreement between the parties.

## CATCH BASIN INSPECTION RECORD

<b>Name / Title of Inspector:</b> _____	
<b>Date of Inspection:</b> _____ MM / DD / YEAR	<b>Required Maintenance / Problems:</b>
<b>Weather Conditions:</b> <input type="checkbox"/> Dry > 24 hours <input type="checkbox"/> Wet	
<b>Catch Basin condition:</b> <input type="checkbox"/> Flows <input type="checkbox"/> Standing water	<b>Grate properly aligned?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Sediment buildup depth:</b> <input type="checkbox"/> 0-6" <input type="checkbox"/> 6-12" <input type="checkbox"/> 12-18" <input type="checkbox"/> 18-24" <input type="checkbox"/> > 24"	<b>Observed:</b> <input type="checkbox"/> Foam <input type="checkbox"/> Oil Sheen <input type="checkbox"/> Sanitary Waste <input type="checkbox"/> Floatables <input type="checkbox"/> Excessive Sediment <input type="checkbox"/> Other: _____
<b>More than 50% full?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No	<b>Effluent Flow?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Comments:</b>   	
<b>Abatement scheduled for:</b> _____ at _____ MM / DD / YEAR TIME	

- Remove accumulated sediment
- Remove trash and debris
- New grate is required
- Grate needs to be aligned
- Pipe is blocked
- Pipe maintenance is required
- Frame maintenance is required
- Basin undermined or bypassed
- Cannot remove cover
- Corrosion
- Need cement around grate
- Other: \_\_\_\_\_

*If any checked above, indicate date of scheduled maintenance or repair below.*